

CVC.24942

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LORETTA CLARK,**  
**Plaintiff,**

**VS.**

**LA FITNESS INTERNATIONAL, L.L.C.**  
**d/b/a LA FITNESS,**  
**Defendant.**

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**CIVIL ACTION NO. 4:19-cv-4265**

**DEFENDANT LA FITNESS INTERNATIONAL, LLC'S NOTICE OF REMOVAL**

Defendant **LA FITNESS INTERNATIONAL, LLC** ("Defendant"), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal.

**I. INTRODUCTION**

1. This removal is based on diversity jurisdiction. Plaintiff Loretta Clark ("Plaintiff") seeks redress from Defendant under a premises liability theory of recovery for injuries she allegedly suffered while taking a shower in the handicap shower stall of the women's locker room. Mrs. Clark attempted to sit on the shower seat inside the stall, but she was injured when the shower seat allegedly collapsed.

2. Plaintiff is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a citizen of Texas.

3. In contrast, Defendant is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a California limited liability company whose members are LAF, Inc., a California corporation with its principal place of business located in Irvine, California, Seidler Fitness Holdings II, LP, a Delaware limited partnership, and the Seidler Company, LLC, a Delaware limited liability company. No member of Fitness International, LLC is a citizen of Texas. The citizenship of a limited liability company such as Fitness International, LLC is

determined by the citizenship of its members, not by the state where the entity was organized. *See Tewari De-Ox Systems, Inc. v. Mountain States/Rosen, LLC*, 757 F.3d 481, 483 (5<sup>th</sup> Cir. 2014).

4. In addition, the amount in controversy exceeds \$75,000, exclusive of interest and costs. In particular, Plaintiff's Original Petition seeks monetary relief of "over \$200,000 but not more than \$1,000,000."

5. Defendant files this Notice of Removal within thirty days of accepting service of Plaintiff's Original Petition (October 10, 2019). This action has been on file for less than one year.

## **II. BASIS FOR REMOVAL: DIVERSITY JURISDICTION**

### **A. Diversity Jurisdiction Exists**

6. Removal is proper because this lawsuit involves a controversy between citizens of different states. 28 U.S.C. 1332(a)(1). Specifically, Plaintiff is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a citizen of Texas. In contrast, Defendant is now, and was at the time of removal, and at the time of the filing of the instant lawsuit, a California limited liability company whose members are LAF, Inc., a California corporation with its principal place of business located in Irvine, California, Seidler Fitness Holdings II, LP, a Delaware limited partnership, and the Seidler Company, LLC, a Delaware limited liability company. No member of Fitness International, LLC is a citizen of Texas. The citizenship of a limited liability company such as Fitness International, LLC is determined by the citizenship of its members, not by the state where the entity was organized. *See Tewari De-Ox Systems, Inc. v. Mountain States/Rosen, LLC*, 757 F.3d 481, 483 (5<sup>th</sup> Cir. 2014). Thus, complete diversity of citizenship between the parties exists.

7. In addition, the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441. Specifically, Plaintiff's Original Petition seeks monetary relief of "over \$200,000 but not more than \$1,000,000."

**B. Removal Is Timely**

8. Defendant accepted service of a copy of Plaintiff's Original Petition on October 10, 2019. Defendant files this Notice of Removal within thirty days after service. 28 U.S.C. § 1446(b)(1). Thus, removal of this action is timely.

**III. COMPLIANCE WITH REMOVAL PROCEDURES**

9. Attached to or filed with this Notice of Removal are the following documents required by 28 U.S.C. § 1446(a) and S.D. TEX. LOCAL RULE 81 (these documents are hereby incorporated by reference in all respects):

- A. Civil Cover Sheet;
- B. Defendant's List of Attorneys Involved in the Case;
- C. Defendant's Index of Documents;
  - 1. State Court Docket Sheet;
  - 2. Plaintiff's Original Petition, filed September 25, 2019; and
  - 3. Defendant's Original Answer, filed October 22, 2019.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 124(b)(2) and 1441(a) because the United States District Court for the Southern District of Texas, Houston Division, embraces Harris County, Texas, where the state court action was filed and is currently pending. Specifically, Plaintiffs filed suit in the 55<sup>th</sup> Judicial District Court of Harris County, Texas, Cause No. 2019-69736.

11. Defendant will immediately file a copy of this Notice of Removal with the clerk of the state court in which the state court action is pending.

WHEREFORE, PREMISES CONSIDERED, Defendant Fitness International LLC requests this action be immediately and entirely removed upon filing of this Notice of Removal to the United States Court for the Southern District of Texas, Houston Division, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY, SHIPMAN  
& SALINAS, L.L.P.**

BY: /s/Douglas D. Fletcher  
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**ATTORNEYS FOR DEFENDANT LA FITNESS  
INTERNATIONAL, LLC d/b/a LA FITNESS**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing instrument was electronically filed via the Court's CM/ECF system and a true and correct copy of same was delivered to all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 30<sup>th</sup> day of October 2019.

/s/ Douglas D. Fletcher

**DOUGLAS D. FLETCHER**